

NORTH CAROLINA
DURHAM COUNTY

CHDO GRANT AGREEMENT

This CHDO Grant Agreement ("Agreement") is made and entered into this the _____ day of _____, 2011 between the City of Durham, North Carolina, a municipal corporation, organized and existing under the laws of the State of North Carolina, whose address is 101 City Hall Plaza, Durham, North Carolina (the "City") and Builders of Hope, Inc. (BOH) a non-profit corporation exempt under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended and having an office at 310 N. Harrington Street, Raleigh, NC 27603.

WHEREAS, the City has entered into an Agreement to receive funds under the HOME Investment Partnerships Program (hereinafter called the "HOME" Program) from the US Department of Housing and Urban Development (hereinafter called "HUD"); and

WHEREAS, the City has set aside a portion of its HOME Program funds for community housing development organizations in accordance with the National Affordable Housing Act of 1990, as amended, (hereinafter called the "Act"); and

WHEREAS, Builders of Hope, Inc. is certified by the North Carolina Housing Finance Agency as a Community Housing Development Organization (CHDO), per the definition set forth by HUD and is eligible for award of CHDO designated funds per 24 CFR 570.92 (300).

WHEREAS, the City and BOH have entered into this Agreement in order to provide BOH with funding for the purpose of acquisition and rehabilitation of substandard homes, as such funding is permissible under 24 CFR 92.205 and 92.206;

WHEREAS, the City desires to provide financing to BOH to assist it with its efforts of providing affordable housing to low and moderate income families throughout the City of Durham;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

A. DEFINITIONS:

Except to the extent modified or supplemented by this Agreement, any term defined in 24 CFR Part 92 shall have the same meaning when used herein.

- (1) Agreement means this agreement, the approved application for HOME assistance (including cover letters, maps, schedules, award letters prior and subsequent to this funding agreement, and other submissions in the approved application), and any subsequent amendments to this Agreement.

- (2) CHDO means Builders of Hope, Inc.
- (3) "Assistance" or "Grant" means the funds provided under this Agreement.
- (4) "Program" or "Project" means the affordable housing program or project, including the administration thereof, for which assistance is being provided under this Agreement.

B. USE OF HOME FUNDS:

- (1) The CHDO shall perform the projects or tasks related to its allocation of HOME funds according to the schedule and within the budget outlined in Attachment A, entitled, "Scope of Services." Attachment A is hereby made a part of this Agreement.
- (2) The CHDO shall propose projects within 24 months of receiving HOME funds under this Agreement which meet HOME requirements under 24 CFR Part 92. 300 and conform to the City's Consolidated Plan.

C. DURATION OF THE AGREEMENT:

The City agrees to provide to the CHDO HOME Investment Partnerships Program (HOME) Assistance under Title II of the National Affordable Housing Act of 1990 as described in this Agreement. This Agreement will remain in effect until **June 30, 2013**.

D. SCOPE OF SERVICES:

Project funds will be used for the rehabilitation or replacement of a minimum of four single family properties located in the revitalization area of the Southside neighborhood that will be totally rehabilitated, or replaced, as specified in Attachment A.

E. AMOUNT OF ASSISTANCE:

The City shall make available to BOH up to the maximum amount of **Two Hundred Eleven Thousand (\$211,000.00) Dollars** pursuant to this Agreement. Said funds shall be disbursed by the City to BOH for performance of the services described in Attachment A.

F. OBLIGATIONS OF THE CHDO:

- (1) The CHDO shall comply with all applicable regulations outlined in 24 CFR Part 92, and all applicable lawful requirements of the City, all applicable requirements of the General Statutes of the State of North Carolina and any

other applicable statutes, laws and Executive Orders currently or hereafter in force.

- (2) The CHDO shall assume responsibility for (i) managing the day-to-day operations of its HOME program to assure compliance with program requirements outlined in 24 CFR Part 92, and (ii) taking appropriate action when performance problems arise.
- (3) The CHDO shall take full responsibility for ensuring that housing it has assisted with HOME funds meets the affordability requirements of 24 CFR Part 92.252 or 92.254 as applicable, and agrees to repay the outstanding balance of its HOME funds remaining to the City if the housing does not meet the affordability requirements for the specified time period.
- (4) The CHDO shall spend its total allocation of HOME funds under this Agreement on eligible activities by **June 30, 2013**.
- (5) The CHDO shall submit a project completion report to the City no later than 60 days after the final drawdown request for HOME funds under this Agreement.
- (6) The CHDO shall comply with all applicable uniform administrative requirements as described in 24 CFR Part 92.505.
- (7) The CHDO shall carry out each activity in compliance with all federal laws and regulations described in 24 CFR Subpart H, including the environmental review in 92.352.
- (8) The CHDO shall assume affirmative marketing responsibilities in accordance with 24 CFR Part 92.351.
- (9) The CHDO shall return to the City any unobligated HOME funds on hand at the expiration of the Agreement.
- (10) The CHDO shall be responsible for complying with the provisions of this Agreement even when the CHDO designates a third party or parties to undertake all or any part of the program. All third parties must be bound in writing to the same provisions as required by this Agreement, and any such assignment or contracting of third parties to perform all or any portion of this Agreement's responsibilities shall be approved in writing and in advance by the City's Director of the Department of Community Development ("DDCD").
- (11) The CHDO shall comply with all lawful requirements of the City necessary to insure that the program is carried out in accordance with the CHDO's Certifications including the certifications of assumption of environmental and labor standard responsibilities specified in 24 CFR Part 92.

- (12) The assistance provided under this Agreement shall not be used by the CHDO to pay a third party to lobby the City for funding approval, approval of applications for additional assistance, or any other approval or concurrence of the City required under this Agreement. HOME funds may be used to pay reasonable fees for bona fide technical, consultant, managerial or other such services, other than actual solicitations, if these services are eligible as program costs, and in accordance with Attachment A.
- (13) The CHDO shall reimburse the City for any amount of HOME funds determined by the City to have been improperly expended.
- (14) If applicable, the CHDO shall abide by the conditions prescribed in 24 CFR Part 92.257 for the use of HOME funds by religious organizations.
- (15) The CHDO shall notify the City in writing of any changes in its 501 (c) (3) tax exempt status throughout the specified period of this Agreement, or any other change to the nonprofit which alters the organization such that it no longer meets the definition of a CHDO as provided under 24 CFR Part 92.

G. RECORDS AND REPORTS:

- (1) The CHDO shall maintain and make available at reasonable times and places all records, information and reports necessary to assist the City in meeting its internal and federally mandated record keeping and reporting requirements in accordance with 24 CFR Part 92.508. Such records and accounts shall include all property, personnel, and financial records the City and Federal agencies deem necessary to assure a proper accounting for all HOME Program funds.
- (2) The CHDO shall provide the City with all information that the City may reasonably require, including information for the City to complete the Consolidated Annual Performance and Evaluation Review report and other reports required by HUD.
- (3) The CHDO shall provide an annual audit report performed in compliance with OMB Circular A-133.
- (4) The CHDO shall allow the City to conduct monitoring and evaluation activities as determined necessary by the City and HUD.
- (5) The CHDO shall keep a fully executed copy of this Agreement and a copy of the HOME regulations on file in their place of business at all times.
- (6) The CHDO shall keep all documents used to determine their status as a

Community Housing Development Organization as defined under 24 CFR Part 92 current and available for inspection by the City for the duration of this Agreement.

- (7) The CHDO agrees to repay, remit or return to the City any amount of remaining HOME funds provided under this Agreement, if the City determines that the CHDO does not have the capacity to carry out its HOME program on schedule or in a timely manner. The City shall provide a written determination of its finding to the CHDO ten (10) days prior to the request to remit, return or repay the HOME funds.
- (8) The CHDO shall provide any duly authorized representative of the City, the Department of Housing and Urban Development and the Comptroller General of the United States, at all reasonable times, access to and the right to inspect, copy, monitor and examine all of the books, papers, records, and other documents relating to the HOME grant and the fulfillment of this Agreement for a period of three years following the completion of all closeout procedures respecting HOME funds, and the final settlement and conclusion of all issues arising out of the HOME grant.

H. PAYMENT:

- (1) The CHDO shall request disbursement of HOME funds only for reimbursement of eligible expenditures made or eligible expenses incurred by the CHDO, except where advance payments are explicitly authorized in writing by the City at the sole discretion of the City.

All expenditures and expenses shall be incurred in accordance with the provisions of the Agreement. Payments shall only be made after the CHDO has presented documentation of expenses that meet City approval. It is expressly understood and agreed by the CHDO that payment by the Grantee will not exceed the maximum sum of **\$211,000.00** for all of the services specified in Attachment A. Further, the CHDO understands and agrees that any payment made under this Agreement by the City is limited to funds made available under the grant referenced above. The City shall make payments upon receipt of a request for check from the CHDO, documentation of expenditures and any other documentation that the City's Director of the Department of Community Development may require from the CHDO. All documentation required of the CHDO under this Agreement shall be in such form and substance as is satisfactory to the City. Payments shall be made only for the activities specified in Attachment A. Check requests for reimbursable expenses will be processed by the City for payment no more often than monthly, until all such grant funds have been expended or until this Agreement has expired, whichever shall come first.

- (2) The sum total of the CHDO reimbursements during the term of the Agreement shall not exceed the amount of the agreed upon budget appearing in Attachment A.
- (3) The CHDO shall submit monthly reports to the City within seven (7) business days following the closure of the month for which the activity is being reported. The CHDO shall provide to the City any other information determined by the City to be necessary or appropriate for the proper monitoring of this Agreement. Delays by the CHDO in making any report to the City required by this Agreement may, at the City's sole discretion, result in delays in payment to the CHDO of part or all of the CHDO's request for funds. A delay in making a disbursement by the City to the CHDO does not change the time required of the CHDO to submit reports to the City.

I. CONFLICT OF INTEREST:

- (1) No employee, agent, consultant, officer, elected official or appointed official of the City of Durham who has responsibilities related to the HOME Program or access to information concerning said program shall obtain a financial benefit or interest from any HOME Program activity for themselves or those with whom they have family or business ties during their tenure and for one year thereafter.
- (2) The CHDO shall make a good faith effort to enforce this provision with regard to its employees and ensure that its employees do not participate in conflicts of interest or self-dealing as defined by applicable HUD regulations and the provisions of this subsection I. Any suspected violations shall be promptly reported to the DDCCD.

J. DEFAULT:

- (1) It is expressly agreed and understood that the CHDO's designation as a CHDO shall become null and void, at the City's option, in the event the CHDO fails to meet one or more of the criteria for CHDO designation and or fails to develop, sponsor or own one or more housing projects in conformance with 24 CFR Part 92.
- (2) The City shall notify the CHDO in writing of any such default under this Agreement.
- (3) The CHDO shall have sixty (60) days after receipt of the written notice of default within which to cure such default.
- (4) The CHDO agrees to repay, remit or return to the City any amount of unspent HOME funds provided to the CHDO in the event of a default under the terms of this Agreement.

K. SUSPENSION OR TERMINATION:

- (1) The City may suspend or terminate this Agreement, in whole or in part, if the CHDO materially fails to comply with any term of this Agreement, or with any of the laws, regulations or provisions referenced herein, and as they may be amended from time-to-time during the term of this Agreement.
- (2) In the event there is probable cause to believe the CHDO is in noncompliance with any applicable laws or regulations, the City may withhold HOME funds until such time as the CHDO is found to be in compliance by the City, or is otherwise determined to be in compliance.
- (3) The City shall advise the CHDO in writing of what actions must be taken for resumption of payments, if the non-compliance or breach may be remedied by actions of the CHDO..
- (4) Termination due to adverse environmental impact. This Agreement is conditioned on the City's determination to proceed with, modify or cancel its Grant based on the results of a subsequent environmental review. This Agreement may be terminated by the City of the CHDO at the conclusion of the environmental review process if the results of the review indicate that the project would have a significant adverse impact on the environment, or if preexisting environmental contamination is found, and this impact or contamination cannot be feasibility and cost-effectively eliminated or mitigated.

L. INDEMNIFICATION

(a) To the maximum extent allowed by law, Self-Help shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of Self-Help or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a," Self-Help shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City. (b) Definitions. As used in subsections "a" above and "c" below -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or

delivery of the items that are the subject of this contract). "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees, excluding Self-Help. (c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract.

(d) Survival. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of Self-Help under this contract. (e) Limitations of Self-Help's Obligation. If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection "a" above shall not require Self-Help to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

M. MISCELLANEOUS PROVISIONS:

- (1) When any service or consent is required or permitted to be given under the terms of this Agreement or under applicable law, such notice or consent shall be in writing and shall be effective only upon the earlier of (i) actual receipt by the party to whom notice is given or (ii) 48 hours after deposit in registered or certified United States mail. Such notice shall be given by personal delivery or sent by certified mail, return receipt requested, and addressed as follows:

To City:

Director, Department of Community Development
City of Durham
101 City Hall Plaza
Durham, NC 27701
919-560-4570
919-560-4090 fax

To Grantee:

Chief Executive Officer
Builders of Hope, Inc.
310 N. Harrington Street
Raleigh, NC 27603
919-830-6666
919-473-0412 fax

IN WITNESS WHEREOF, the City of Durham and Builders of Hope, Inc. have caused this CHDO Grant Agreement to be duly executed all as of the day and year first above written.

City of Durham

By:_____

Thomas J. Bonfield, City Manager

ATTEST:

City of Durham

City Clerk

Builders of Hope, Inc.

BY:_____

Nancy Murray, Chief Executive Officer

ATTEST:

Secretary

(Affix corporate seal here)

**NORTH CAROLINA
DURHAM COUNTY**

I, a notary public in and for the aforesaid County and State certify that _____ personally appeared before me this day, and acknowledged that he or she is the _____ City Clerk of the City of Durham, a municipal corporation, and that by authority duly given and as the act of the City, the foregoing contract or agreement was signed in its corporate name by Thomas J. Bonfield, its City Manager, sealed with its corporate seal, and attested by its said City Clerk or Deputy City Clerk. This the _____ day of _____, 2011.

My Commission Expires: _____

Notary Public

**NORTH CAROLINA
DURHAM COUNTY**

I, a notary public in and for the aforesaid County and State, certify that _____ personally appeared before me this day and stated that he or she is the _____ Secretary of Builders of Hope, Inc., a non-profit corporation, and that by authority duly given and as the act of the corporation, the foregoing contract or agreement with the City of Durham was signed in its name by its Chief Executive Officer, whose name is Nancy Murray, sealed with its corporate seal, and attested by him/herself as its said Secretary or Assistant Secretary. This the _____ day of _____, 2011.

My Commission Expires: _____

Notary Public

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

City's Finance Officer

Date

ATTACHMENT A

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Builders of Hope, Inc.
Southside Acquisition/Rehabilitation

Scope of Services

1. **Properties to be Acquired and Rehabilitated with Grant.** Funds awarded under this Agreement will be provided to BOH on a reimbursement basis for the acquisition and complete rehabilitation of a minimum of 4 single family dwellings located in the Southside neighborhood. As each unit is identified for purchase from Self-Help by BOH, they must submit building plans, including floor plans, façade elevations and materials list, to be approved by DCD, along with a project budget showing sources and uses and proposed sale price.
2. **Eligible Buyers.** The rehabilitated properties will be sold to low-mod income buyers. The buyers purchasing the rehabilitated home may not earn more than 80% of the HUD-determined Area Median Income (AMI), as that may be revised from time to time by HUD. If any of the homes are offered for rental by BOH, they must be occupied by households having an income which does not exceed 60% of the HUD-determined AMI. In the event BOH is unable to sell the units after being actively marketed for a period of six months after completion and they wish to offer any units for rental, BOH must obtain prior written consent from the DDCCD and must also comply with all HOME rental guidelines as specified by HUD.
3. **Restrictive Covenants.** BOH shall impose a Declaration of Restrictive Covenants in form and content agreed to by the City upon each property acquired with funds provided under this Agreement at the time BOH acquires the property, with the Declaration placed on file at the Register of Deeds for Durham County when the Deed is filed titling the property to BOH. A Period of Affordability shall be imposed for 15 years.
4. **Rehabilitation Standards.** BOH shall rehabilitate each home to meet System Vision specifications, with Advanced Energy certifying upon completion that the energy required to heat and cool each home will not exceed the guaranteed usage. Upon completion of construction, BOH shall provide to the DDCCD for each home a copy of the Comfort and Energy Use Two Year Guarantee along with the Energy Star certificate, and a copy of the certificate of occupancy. Completion of construction shall be defined as the date by which a certificate of occupancy has been issued for each home.
5. **Remedy for Breach.** If, for any reason BOH does not complete construction for at least 4 homes within 24 months of the commencement of this Agreement, or for any other breach of this Agreement's terms, the City shall have the right to recapture from BOH the amount of funds provided for each property for which acquisition and rehabilitation was not timely completed, or, at the City's election, to have a deed of trust encumbering the parcel and any improvements constructed thereon provided to the City by BOH, noting the entire amount of funds provided by the City under this Agreement as the secured amount, and with the City as the beneficiary

All terms of this Agreement shall continue to be enforceable by the City so long as any obligations of the BOH under this Agreement have not been fulfilled. In addition to the remedies provided under this section, the City shall retain all other remedies provided in any project document, or under local, state or federal laws or regulations.

6. Payments and Documentation. Prior to any reimbursement, BOH will provide to the DDCCD a copy of the closing package documenting that BOH has secured title to the parcel and that the restrictive covenants imposing the period of affordability have been imposed and have been filed at the Durham County Registry of Deeds. BOH will submit a draw request for funds to the City providing documentation of its renovation costs on such forms and with such additional documentation as is reasonably requested by the City, to be reimbursed by the City not more often than once per month.

After provision of the proper documentation, BOH will be reimbursed the actual cost of construction of each unit up to the amount specified for City-provided HOME funding in the Project Budget, but in no event shall the aggregate expenditure for all properties of such HOME funds exceed \$211,000.00. Funds may be shifted between line items of the Project with prior written approval of the DDCCD provided these adjustments do not extend the term of the agreement or increase the total funding for contract activities and only to the extent that such action does not result in a change in the Project and so long as it does not exceed ten percent (10%) of the line item total from which the funds are being removed or to which the funds are being added. In addition, the DDCCD shall have the authority to permit BOH to rent the rehabilitated homes to eligible tenants, as governed by HOME regulations. BOH shall not be allowed to rent the rehabilitated homes without such written permission.

Upon sale of each property to a home buyer, BOH shall provide to the Director of DCD a copy of the deed transferring the property, file-stamped by the Register of Deeds, along with certification of the eligible buyer's household income, which shall be computed using the HUD regulations governing Section 8 eligibility determination, as those regulations may be revised from time-to-time by HUD.

7. Proposed Project Budget.

Average acquisition cost per property	\$35,000
Average Rehabilitation cost per property (including construction costs, soft costs and developer fees)	<u>\$120,000</u>
Total Estimated Development Cost per unit	\$155,000

HOME funds provided by this Agreement will be used as gap financing for the difference between the cost of acquisition and rehabilitation and the actual sales price. The following example is provided as an illustration.

Total acquisition and rehabilitation cost per unit	\$155,000
Less anticipated net sale price range	<u>105,000 to 115,000</u>
Estimated required gap financing	\$ 50,000 to 40,000